

# UNITED STATES PATENT AND TRADEMARK OFFICE

**SERIAL NO:** 79/001606

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**MARK:** FLORIO

**CORRESPONDENT'S REFERENCE/DOCKET NO:** N/A

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Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

## OFFICE ACTION

**MAILING/E-MAILING DATE INFORMATION:** If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tarr.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 79/001606

This letter responds to Applicant's communication filed on 11-18-05. Applicant responded by submitting a request for remand, for consideration of additional evidence. The assigned examining attorney has reviewed Applicant's response and determined the following.

The trademark examining attorney has carefully reviewed the request for reconsideration and is not persuaded by applicant's arguments. No new issue has been raised and no new compelling evidence has been presented with regard to the point(s) at issue in the final action. TMEP §715.03(a). Accordingly, applicant's request for reconsideration is denied and the refusal is continued. 37 C.F.R. §2.64(b); TMEP §715.04.

Applicant's additional evidence and the evidence that is of record is not persuasive enough to rebut the assertion that FLORIO is a surname. For instance, Applicant relies heavily on US Census data that appears to demonstrate that FLORIO should not be considered a surname. However, the methodology used for the US Census is limited by several facts and should not be given much if any weight in the determination of whether or not FLORIO is primarily merely a surname. The Census data is based on a sampling group that is 1/40th of the population of the United States, therefore according to the Census Bureau, certain limitations arise, most notably, "as the sample thins, one might draw conclusions about frequency that are not warranted.... [t]he limitations due to sampling are much more noticeable when

looking at rarely occurring names--especially surnames. Consider a surname appearing 63 (out of 6.3 million entries) times in the file dist.all.last. Here the frequency would appear as 0.001 percent, but it is possible that that sample frequency may not be close to "truth"..." (See attached evidence.)

Applicant also has included evidence from a webpage that purports to only provide 1 hit for the surname FLORIO. It should be noted that this evidence is also questionable. When entering the surname JOHNSON in the search field of this website, it should be noted that the return is also, 1 hit. (See attached.)

Because Applicant's evidence and arguments were not persuasive, the application file will be returned to the Trademark Trial and Appeal Board for resumption of the appeal.

/tmm/  
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